

SENATE RECORD VOTE ANALYSIS

105th Congress
1st Session

Vote No. 38

April 10, 1997, 6:31 pm
Page S-2994 Temp. Record

NUCLEAR WASTE/Liability

SUBJECT: Nuclear Waste Policy Act of 1997 . . . S. 104. Bumpers amendment No. 33 to the Murkowski substitute amendment No. 26.

ACTION: AMENDMENT REJECTED, 24-69

SYNOPSIS: As reported, S. 104, the Nuclear Waste Policy Act of 1997, will set deadlines for the Department of Energy to meet its contractual obligations to accept and to store at a single permanent repository the nuclear waste generated by the commercial nuclear power industry; that site will also be used to store all Federal nuclear waste. Congress has selected Yucca Mountain, Nevada, as the site to be considered for the permanent repository. If the President decides that site is unsuitable, a timetable for selecting an interim central storage site will be followed; the Nevada Test Site will be selected as the interim site if another interim site is not agreed upon by the President and Congress (the Nevada Test Site is commonly referred to as being at Yucca Mountain because it is on immediately adjacent land, and both sites are federally owned). If Yucca Mountain is approved for a permanent repository, an interim repository will be built at the Nevada Test Site.

The Murkowski substitute amendment would make several compromise changes. Those changes include: lowering the permitted tonnage capacity for an interim storage facility; delaying the construction and operation dates; authorizing the Environmental Protection Agency to be involved in setting the radiation protection standard; requiring the Environmental Impact Statement for the repository to include a generic analysis of the impacts from transporting used fuel to the storage facility; allowing preemption of State and local laws only if State intransigence prevented a Federal purpose; changing the user fee modifications; and striking the provision stating that existing legal rights will be protected and inserting in lieu thereof that it is the sense of Congress that legal disputes on nuclear waste should be settled.

The Bumpers amendment would express the sense of the Senate that the Department of Energy's inability to begin accepting nuclear waste by the contractual deadline of January 31, 1998 is "because of delays arising out of causes beyond the control and without the fault or negligence of the Department of Energy," that the Department of Energy is not contractually liable for delays

(See other side)

YEAS (24)		NAYS (69)		NOT VOTING (7)	
Republicans (0 or 0%)	Democrats (24 or 60%)	Republicans (53 or 100%)	Democrats (16 or 40%)	Republicans (2)	Democrats (5)
	Akaka	Abraham	Hutchison	Byrd	Boxer- ²
	Baucus	Allard	Inhofe	Cleland	Conrad- ²
	Biden	Ashcroft	Jeffords	Dodd	Dorgan- ²
	Bingaman	Bennett	Kempthorne	Feingold	Feinstein- ³
	Breaux	Bond	Kyl	Graham	Wellstone- ²
	Bryan	Brownback	Lott	Hollings	
	Bumpers	Burns	Lugar	Johnson	
	Daschle	Campbell	Mack	Kerrey	
	Durbin	Chafee	McCain	Kohl	
	Ford	Coats	McConnell	Leahy	
	Glenn	Cochran	Murkowski	Levin	
	Harkin	Collins	Nickles	Lieberman	
	Inouye	Coverdell	Roberts	Mikulski	
	Kennedy	Craig	Roth	Moseley-Braun	
	Kerry	D'Amato	Santorum	Robb	
	Landrieu	DeWine	Sessions	Sarbanes	
	Lautenberg	Domenici	Shelby		
	Moynihan	Enzi	Smith, Bob		
	Murray	Faircloth	Smith, Gordon		
	Reed	Frist	Snowe		
	Reid	Gorton	Specter		
	Rockefeller	Gramm	Stevens		
	Torricelli	Grassley	Thomas		
	Wyden	Gregg	Thompson		
		Hagel	Thurmond		
		Hatch	Warner		
		Helms			
<p>EXPLANATION OF ABSENCE: 1—Official Business 2—Necessarily Absent 3—Illness 4—Other</p> <p>SYMBOLS: AY—Announced Yea AN—Announced Nay PY—Paired Yea PN—Paired Nay</p>					

due to such causes, and that whenever considering an action alleging that the Department of Energy is failing to meet its obligation to meet the January 31, 1998 deadline a court should take due account of the fact that the Department of Energy is not liable for delays due to such causes.

Those favoring the amendment contended:

Private building contracts commonly contain clauses that allow delays in construction without penalty if those delays are beyond the control of the builders. For instance, if a tornado destroys a project when it is half-finished, a builder's contract usually protects him from penalty when he consequently fails to meet the project completion date. The Federal Government puts such clauses into its contracts as well. The contracts that the Department of Energy (DOE) entered into with utilities to accept nuclear waste are not exceptions to the rule. They each state that the Government will not be liable for damages caused by a failure of the DOE to perform its obligations if such failure arises out of causes beyond the control and without the fault or negligence of the DOE. The DOE is not going to be able to fulfill its obligation under these contracts to begin accepting nuclear waste for storage by January, 1998. Its failure will be for numerous reasons which are beyond its control, including that Congress has not appropriated enough funds, that Congress has passed additional environmental laws that have caused delays, that the Environmental Protection Agency has not met its deadline for setting radiation standards for a repository, and that the State of Nevada has been slow in issuing permits for the proposed site at Yucca Mountain. Despite these facts, one court has already ruled that the DOE must meet the January, 1998 deadline. A new court case is pending, in which the utilities are asking that the fees they pay into the waste disposal fund be put into escrow. They are asking for this action based on the contention, again, that the DOE is not living up to its obligations. We do not know how any reasonable person could come to this conclusion looking at the facts. Therefore, we have offered the Bumpers amendment. This amendment does not presume to tell the courts how to decide the case; it simply points out that the DOE is not responsible, and that the contracts say that if the DOE is not responsible then it is not liable. We trust that if the courts look at these facts, they will be able to put two and two together. We urge the adoption of the Bumpers amendment.

Those opposing the amendment contended:

Once upon a time in America deals were settled with handshakes and they were honored. People did not hire lawyers to write intricate, convoluted documents as a substitute for integrity, nor did they hire lawyers to find loopholes in contracts. Sadly, those days are gone. Intricate contracts are written and lawyers twist them in court. In this case, the DOE entered into contracts in 1982 with utilities to begin accepting their nuclear waste for centralized storage by January 31, 1998. Since that time, utility ratepayers have paid \$13 billion to the Federal Government to build a permanent repository. If a permanent repository is not built by that time the Federal Government is still required to begin accepting the waste. Every Senator is aware that the DOE will not have a permanent or temporary site for storing nuclear waste ready by the deadline. Our colleagues, in this amendment, state that it is the sense of the Senate that the DOE is not to be blamed for this fact, and is therefore not legally liable. This statement is demonstrably false. The DOE has followed a consistent course of delay since 1982, including by failing to ask for additional funds. In 1984, the Secretary of Energy affirmed that the Energy Department was obligated to begin accepting spent nuclear fuel whether or not a permanent disposal facility was ready. Three years went by with little progress. Congress finally acted by designating Yucca Mountain, Nevada, as the only site for the Department of Energy to consider. This action should have prodded the DOE into action but it did not. Instead, it announced a 5-year delay in building a permanent disposal facility. No request was made for additional funds--the announcement was simply made. In 1989, it took further action by announcing an additional 7-year delay, to 2010. Most recently, it said that it will not have a completed facility before 2015. Throughout the 1980s and early 1990s the DOE acknowledged that it had a legal obligation to begin accepting the waste by 1998, whether or not it had built a permanent repository. In 1993, under President Clinton, it began to hedge, though it still recognized its responsibility. In May, 1993, Secretary O'Leary affirmed that the DOE had an obligation to electric utilities and their customers, stating that "If it does not have a legal obligation, then it has a moral obligation." In 1994, though, the DOE reneged. In response to a notice of inquiry, it made the preliminary determination that it did not have a statutory obligation to accept spent nuclear fuel in 1998 in the absence of an operational repository or suitable storage facility. A court has since ruled that the DOE is wrong. Additional court cases are pending. We think that the courts are perfectly capable of looking at the pattern of delay by the DOE, and at other delays that have occurred, and at reaching logical judgments based on the facts. Therefore, we have not offered any sense of the Congress amendments stating how we believe the courts should operate. If we did, we certainly would not offer an amendment like the Bumpers amendment, which falsely asserts that the DOE is blameless for the delay. We therefore urge the rejection of this amendment.